IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8629 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT STATE ROAD TRANSPORT CORPN

Versus

SOMABHAI KHATARIA VASAVA

Appearance:

1. Special Civil Application No. 8629 of 2004

MR HARDIK C RAWAL for Petitioner No. 1

NOTICE SERVED BY DS for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 13/04/2005

ORAL JUDGEMENT

1. Present petition is preferred against the award

dated 10-1-2000 passed by the Labour Court, Bharuch in Reference (LCB) No.299 of 1996, whereby punishment of dismissal from service awarded by the petitioner Gujarat State Road Transport Corporation has been reduced to stoppage of three annual increments with future effect and reinstatement in service was awarded.

2. Learned advocate for the petitioner mainly submitted that the impugned award passed by the Labour Court, Bharuch is, prima facie, erroneous and bad in law. He has also submitted that misconduct committed by the respondent workman was that when he was on his duty in the State Transport bus as a conductor, he recovered the bus fare from two passengers and had not issued tickets to them till the place of checking and those two tickets were recovered by the Checking Squad as unpunched tickets. Similarly, another passenger who boarded the S.T. bus from Ora village and he was to get down at village Samani, from the said passenger neither fare charges were recovered nor any ticket was issued to him and similarly in case of another passenger who boarded from village Sudina Patiya and he was to get down at village Samani the respondent workman had neither collected any fare nor issued any ticket to him and way-bill was not properly filled in which he was otherwise required to fill in accurately. The way-bill generally reflects issuance issuance of the tickets and collection of fare charges by the concerned conductor.

3. It is submitted by the learned advocate for the petitioner that there was grave misconduct committed by the respondent - workman and after giving opportunity of being heard to him and after holding departmental inquiry the services of the respondent - workman were brought to an end. Thus the principles of natural justice were followed by the petitioner. It is also submitted by the learned advocate for the petitioner that before the Labour Court, Bharuch legality and validity of the departmental inquiry was accepted by the respondent workman as narrated in paragraph No.11 of the impugned award and therefore the only question left open for the Labour Court, Bharuch was to adjudicate as to the quantum of punishment looking to the nature of the misconduct. Whether the punishment of dismissal awarded by the petitioner was so shocking disproportionate that it requires to be quashed and set aside and whether lesser punishment can be imposed. He has also submitted that looking to the nature of misconduct of the respondent workman punishment of dismissal awarded by the petitioner was just, proper and adequate and it cannot be labelled as shockingly disproportionate and misplaced sympathy has

been shown by the Labour Court, Bharuch towards the respondent workman. It is also submitted by the learned advocate for the petitioner that there are catena of decisions of the Hon'ble Supreme Court upon which he relies and pointed out the correct proposition of law that in the cases of misconduct of misappropriation punishment of dismissal has been upheld by the Hon'ble Supreme as well as by this Court in several judgments which are as under :

i. 1982 GLH 1057
ii. 1993 (1) GLR 302
iii. (2000) 7 SCC 517
iv. (2001) 2 SCC 754
v. (2003) 3 SCC 605
vi. JT 2004 (8) SC 103
vii. JT 2004 (8) SC 113.
viii. AIR 1977 SC 1512
ix. (2005) 2 SCC 481

4. It is submitted by the learned advocate for the petitioner that the powers conferred upon the Labour Court u/s 11-A of the Industrial Disputes Act, 1947 are not unlimited and cannot be exercised dehors the fact. It is also submitted by the learned advocate for the petitioner that there are as many as 25 misconducts of the respondent - workman in the past which are reflected in paragraph No. 2 of Civil Misc. Application No.1327 of 2004 filed in Special Civil Application No.8629 of 2004. Misconducts of the respondent - workman are of similar nature. Initially by taking lenient view some annual increments of the respondent - workman were stopped. All the punishments have been accepted by the respondent - workman. Net effect of the total punishments awarded awarded by the petitioner for the past misconducts is such that the respondent - workman is not entitled to get any increment till he retires and therefore the Labour Court's sympathy shown to the respondent while passing the award of reinstatement for stoppage of three annual increments with future effect is hardly having any effect. Total misconducts of the respondent workman are more than two dozen in number.

5. It is also submitted by the learned advocate for the petitioner that the Labour Court has absolutely misdirected itself and has gone unnecessarily in search of bad intention on the part of the respondent - workman. Misconduct of the respondent - workman has been bifurcated by the Labour Court in two different words; (i) misconduct is committed negligently and (ii) misconduct is committed with bad intention. Learned

advocate for the petitioner also submitted that the said bifurcation of the misconduct of the respondent by the Labour Court is unwarranted and uncalled for. The passengers boarded in the bus and the amount of fare was recovered but the tickets were not issued by the respondent - workman. This misconduct of the respondent workman speaks for itself. Similar is the case for rest of two passengers, though they boarded the S.T. bus till the place of checking neither fare was recovered nor the tickets were issued by the respondent workman. For both these misconducts the respondent workman is not entitled to the reinstatement in service. The petitioner Corporation is running the S.T. buses for welfare of the rank and file of the State of Gujarat. The petitioner is relying upon the conductors and drivers of the S.T. buses. The driver has to drive the S.T. Bus and conductor of the S.T. bus has to recover the fare and to issue tickets to the passengers travelling in the S.T. bus. Only duty with which the conductors are wedded with is recovery of fare and issuance of the tickets to the passengers and sole duty is betrayed and perhaps nothing remains with the respondent - workman to be performed. Main source of the income of the petitioner is recovery of fare from the passengers out of which services of the conductors, drivers and other staff are purchased and salary are paid therefrom and therefore the conductor of the S.T. bus holds the post of faith and confidence. The conductors of the S.T. buses are dealing with the public money and if there is any misappropriation by the conductors it must be dealt with iron hands and sympathy in such type of cases of misappropriation whenever shown by any court has been deprecated in the aforesaid catena of the decisions delivered by the Hon'ble Supreme Court as well as by this Court. Irrespective of the amount misappropriated whether it is bigger or smaller, the delinquent workman is punished for nature of misconduct and not for the amount which is misappropriated and therefore quantum of money involved in the case of misappropriation is not to be seen but the nature of misconduct ought to have been appreciated and the petitioner being a public body cannot remain a silent spectator in such type of cases especially when the respondent has committed more than 2 dozens misconducts.

6. It is also submitted by the learned advocate for the petitioner that expectations as narrated by the Labour Court, Bharuch in paragraph No. 11 of the award that the statements of the witnesses which were recorded are not proved and the passengers ought to have been examined during the course of the departmental inquiry. Perhaps the Labour Court has not appreciated what is

already decided way back in the year 1997 as per the judgment in the case of State of Haryana and another Vs. Rattan Singh, reported in 1977 SC 1512. Report made by the Checking Squad is sufficient and enough and there is no need to examine the passengers. Lastly, it is submitted by the learned advocate for the petitioner that the Labour Court, Bharuch has come to a conclusion that the charges levelled against the respondent are, prima facie, proved, but as the respondent workman was not having bad intention and therefore the order of dismissal was quashed and set aside and award for reinstatement was passed. For the intention, whether it is bad or good, cannot have any direct proof but it ought to have been deduced from the conduct of the delinquent. There is no direct evidence for bad intention. But looking to the facts and circumstances of the case especially when the respondent is recovering the amount of fare from the passengers and is not issuing the tickets to them, it is submitted by the learned advocate for the petitioner that this conduct of the respondent workman tantamounts to misappropriation and when the respondent workman is holding the post of faith and confidence and when he is dealing with the public money, sympathy shown by the Labour Court is misuse of the power by the Labour Court conferred u/s 11-A of the Labour Court. As cumulative effect of the aforesaid factors, it is submitted by the learned advocate for the petitioner that the impugned award passed by the Labour Court, Bharuch deserves to be quashed and set aside and the order of dismissal passed by the petitioner Corporation may kindly be upheld.

7. Though the respondent is served with the notice of Rule nobody has appeared on behalf of the respondent. Neither the respondent nor his advocate is present.

8. It is submitted by the learned advocate for the petitioner that on initial occasion when Civil Misc. Application No. 1327 of 2004 was preferred for review of the order passed by this Court in Special Civil Application No. 8629 of 2004, though the respondent workman was served with the notice of Rule, he had chosen not to remain present before the court and therefore the order was passed by this Court and rule was made absolute vide order dated 24-11-2004 and accordingly Civil Misc. Application No. 1327 of 2004 was allowed and thereafter Special Civil Application No. 8629 of 2004 was placed on admission board and notice was issued by this Court on 7-2-2005. Thereafter though the notice was served upon the respondent, nobody has appeared and thereafter on 23-3-2005 Rule was issued by this Court and it was made returnable on 6-4-2005 and the notice of rule has also

been served upon the respondent but nobody has appeared on behalf of the respondent.

9. I have heard learned advocates for the petitioner and perused the papers including the impugned award passed by the Labour Court, Bharuch.

10. Looking to the facts and circumstances and nature of misconduct committed by the respondent workman, the impugned award dated 10-1-2000 passed by the Labour Court, Bharuch in Reference (LCB) No.299 of 1996, deserves to be quashed and set aside for the following reasons :

i. The charge levelled against the respondent workman is that when the S.T. bus was checked by the Checking Squad on 26-2-1990 it was found that there were 18 passengers in the S.T. bus, out of which for two passengers though fare was recovered, tickets were not issued and for remaining two passengers though they boarded in the bus neither fare was recovered nor tickets were issued. Thus, out of 18 passengers, four passengers were not having tickets. Thus 22% of total passengers travelling in the S.T. bus, were without tickets.

ii. There was charge of misappropriation and grave misconduct against the respondent - workman for which punishment of dismissal was awarded by the petitioner Corporation after holding departmental inquiry.

iii. The respondent - workman was afforded opportunity of being heard and departmental inquiry was conducted and thereafter punishment of dismissal from service was awarded. Legality and validity of the departmental inquiry as per paragraph No.11 of the award passed by the Labour Court, Bharuch was accepted by the respondent - workman vide pursis Exh.3 filed by the respondent workman. Thus departmental inquiry held by the petitioner against the respondent - workman was legal and valid.

iv. Only question was left upon the Labour Court, Bharuch for its adjudication as to quantum of punishment. The Labour Court, Bharuch quashed and set aside the order of dismissal of the respondent - workman and the Labour Court, Bharuch passed the order of reinstatement with

stoppage of three annual increments with future effect in exercise of the powers conferred under Section 11-A of the Industrial Disputes Act, 1947. Leniency shown by the Labour Court, Bharuch is absolutely uncalled and unwarranted. In the cases of misappropriation by the conductors of the S.T. Bus, time and again this Court as well as the Apex Court in number of judgments have been pointed out that in the cases where there is misapproprition, the sympathy ought to not to have been shown by the Labour Court for reinstatement. On the contrary, such type of misconducts ought to have been handled with iron hand. In the case of misappropriation, quantum of money is not to be seen as held by the the Supreme Court in the case of

(a) Regional Manager, U.P. SRTC, Etawah and others Vs. Hotilal and another, reported in 2003(3) SCC 605 especially in paragraph No.10 thereof, which reads as under:

"10. It needs to be emphasized that the court or tribunal while dealing with the quantum of punishment has to record reasons as to why it is felt that the punishment was not commensurate with the proved charges. As has been highlighted in several cases to which reference has been made above, the scope for interference is very limited and restricted to exceptional cases in the indicated circumstances. Unfortunately, in the present case as the quoted extracts of the High Court's order would go to show, no reasons whatsoever have been indicated as to why the punishment was considered disproportionate. Reasons are live links between the mind of decision taken to the controversy in question and the decision or conclusion arrived at. Failure to give reasons amounts to denial of justice. (See Alexander Machinery (Dudley) Ltd. vs. Crabtree). A mere statement that it is disproportionate would not suffice. A party appearing before a court, as to what it is that the court is addressing its mind. It is not only the amount involved but the mental set up, the type of duty performed and similar relevant circumstances which go into the decision-making process while considering whether the punishment is proportionate or disproportionate. If the charged employee holds a position of trust where honesty and integrity are inbuilt requirements of

functioning, it would not be proper to deal with the matter leniently. Misconduct in such cases has to be dealt with iron hands. Where the person deals with public money or is engaged in financial transactions or acts in a fiduciary capacity, the highest degree of integrity and trustworthiness is a must and unexceptionable. Judged in that background conclusions of the Division Bench of the High Court do not appear to be proper. We set aside the same and restore order of the learned Single Judge upholding the order of dismissal." (Emphasis supplied).

(b) In similarly situated case, the Division Bench oBf this Court in the case of Gujarat State Road Transport Corporation Vs. Jamnadas Becharbhai, reported in 1982 Gujarat Law Herald, 1057, at paragraph No. 2, has held as under:

"2. We are however, constrained to elaborate the rider added by us in proposition no. 9 wherein it has been observed by us that when an employee holding a sensitive post of trust has been dismissed from service the matter may have to be viewed in a different light. By way of illustration we have referred to pilferage by a cashier or a store-keeper from the stores in his charge. Perhaps we should have anticipated a situation like the present and referred to misappropriation by a bus conductor who has collected fare from passengers but has failed to issue tickets to them. If a bus conductor has been dismissed in such circumstances, his reinstatement in the same post would enable him to indulge in the same malpractice in future. Everyday, he has to collect fare and issue tickets. Reinstatement in the same post would therefore, involve grave risk because of the repetitive opportunity that he would get to indulge in the malpractice and the daily temptation that he would face. Perhaps he would be tempted to repair the past losses. Under the r circumstances, when in a fit case the Labour Court reaches the conclusion that misappropriation by a bus conductor has been established (in view of the evidence showing that he had collected the fare from the passengers but had not issued tickets though he had sufficient opportunity to do so in circumstances going to show that there was a dishonest intention), the Labour Court would have to think more than twice

before directing reinstatement in the same post as conductor wherein he would be afforded the same opportunity or faced with the same temptation and the Corporation would be exposed to the same risk every day. Be it realised that misappropriation by a bus conductor must be viewed with a degree of seriousness especially having regard to the fact that it would make successful working a public Corporation impossible. In case misappropriation by a conductor is detected and he is found guilty, punishment must be deterrent to him as also to others, for misappropriation in such circumstances, would be in relation to public moneys and the burden would fall on the shoulders of the common man. And be it realised that 80 per cent of the total tax burden consists of indirect taxes which makes it impossible for the common man to stand erect and virtually makes him crouch on the ground. There is another tormenting reason for viewing the matter with anxious eyes. The Public Sector can never (NEVER) succeed if "everyone's property (which it in fact is) is treated as "no one's property. The New Culture for the New Man of New India must therefore be National Interest above all other interests including self-interest, sectional interest or class-interest. And therefore, the bus conductor, poor as he is, may have to suffer. We suffer more than him in having to say so, particularly, because big sharks never get caught. If they get caught they more often than not escape with impunity. But then merely because we cannot prevent the sharks escaping we cannot permit the fly to trifle with Public Property which is the poor men's collective property (if we envision for them a sun-lit day even on some distant tomorrow in the hidden future). Under the circumstances, the Labour Court was not justified in reinstating a conductor who had collected fare, pocketed the same, and robbed the National Exchequer, in he same post where he could reindulge in the same weakness at public cost. The Labour Court, can depending upon facts and circumstances of the case and of the offender direct that he should be absorbed in the workshop section or some other similar post which does not involve daily handling of money. That must be left to the Labour Court. And the Labour Court would have to decide the issue having regard to facts and

circumstances of each case and the demands of the situation in the context of each matter." (Emphasis supplied).

(c) In another decision of this Court in the case of Gujarat State Road Transport Corporation V/s. Kachraji Motiji Parmar, reported in 1993 (1) GLR 302, this Court has taken the same view. Relevant paragraphs No. 5 and 6 of the said decision thereof read as under :

"5. Lastly, we would refer to the decision of the Supreme Court in the case of State of Punjab and others vs. Ram Singh, Ex constable, JT 1992(4) SC 253, wherein the Court observed while interpreting Rule 16.2(1) of the Punjab Police Manual, 1934, Vol.II, wherein the Court observed that a single act of corruption is sufficient to award an order of dismissal under the Rule as gravest act of misconduct. The relevant observations of the Court are as under:

" Take for instance the delinquent that put in 29 years of continuous length of service and had unblemished record; in 30th year he commits defalcation of public money or fabricates also records to conceal misappropriation. He only committed once. Does it mean that he should not be inflicted with the punishment of dismissal but be allowed to continue in service for that year to enable him to get his full pension. The answer is obviously no. Therefore, a single act of corruption is sufficient to award an order of dismissal under the rule as gravest act of misconduct."

"6. In the present case, it is apparent that the Labour Court has misdirected itself and has misplaced sympathy though the workman has committed grave misconduct. He has designedly reissued 15 used tickets. This would indicate that the workman had planned it in advance to collect the tickets from the passengers with view to re-issue the same in the next trip. Not only this, but the workman in the present case has not issued tickets to the two passengers eventhough he had collected the fare from them. Further, he has not issued tickets to three passengers and lastly he has punched some tickets in such a manner so that they can be re-issued in subsequent trip. This conduct on the part of the

workman establishes beyond any doubt that the act of the workman was pre-planned and well designed to misappropriate the Bus fare amount. Apart from this aspect, there was no reason for the Labour Court to ignore the fact that the workman was involved in 44 default cases and on one occasion he was removed from service. In this view of the matter, in our view, the order passed by the Labour Court is on the face of it unreasonable and unjustified. The Labour Court ought to have held that in the facts and circumstances of the case, this was not a fit case for exercise of jurisdiction under Section 11A of the Act."

(d) The Supreme Court in the case of Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) and others Vs. Secretary, Sahakari Noukarara Sangha and others reported in (2000) 7 SCC, 517, has held that in case of misconduct sympathy ought not to have been shown by the labour court for reinstatement. Relevant paragraphs No. 3, 6 and 8 of the said decision read as under :

" 3. The question involved in these appeals is whether the High Court was justified in confirming the order passed by the Labour Court reinstating the respondent workmen with 25% back wages in spite of specific finding of fact that the charges of breach of trust and misappropriation of goods for the value given in the said charges had been clearly established. Apparently, it would be an unjustified direction to reinstate an employee against whom charge of misappropriation is established. A proved act of misappropriation cannot be taken lightly even though a number of such misappropriation cases remain undisclosed and such employees or others amass wealth by such means. In any case, misappropriation cannot be rewarded or legalised by reinstatement in service with full or part of back wages."

"6. As stated above, the learned Single Judge and Division Bench in writ appeals confirmed the findings given by the Labour Court that charges against the workmen for breach of trust and misappropriation of funds entrusted to them for the value mentioned in the charge-sheet had been established. After giving the said findings, in

our view, the Labour Court materially erred in setting aside the order passed by the management removing the workmen from service and reinstating them with 25% back wages. Once an act of misappropriation is proved, may be for a small or large amount, there is no question of showing uncalled for sympathy and reinstating the employees in service. Law on this point is well settled. (Re. Municipal Committee, Bahadurgarh vs. Krishnan Behari). In U.P. SRTC vs. Basudeo Chaudhary this Court set aside the judgment passed by the High Court in a case where a conductor serving with U.P. State Road Transport Corporation was removed from service on the ground that the alleged misconduct of the conductor was an attempt to cause loss of Rs. 65 to the Corporation by issuing tickets to 23 passengers for a sum of Rs. 2.35 but recovering @ Rs. 5.35 per head and also by making entry in the waybill as having received the amount of Rs.2.35, which figure was subsequently altered to Rs. 2.85. The Court held that it was not possible to say that the Corporation removing the conductor from service has imposed a punishment which is disproportionate to his misconduct. Similarly, in Punjab Dairy Development Corporation Ltd. vs. Kala Singh, this Court considered the case of a workman who was working as a Dairy Helper-cum-Cleaner for collecting milk from various centres and was charged for the misconduct that he inflicted the quantum of milk supplies in the milk centres and also inflated the quality of a fat contents where there were less fat contents. The Court held (at SCC pp.161-62 para 4) that in view of the proof of misconduct a necessary consequence will be that the management had lost confidence that the workman would truthfully and faithfully carry on his duties and consequently the Labour Court rightly declined to exercise the power under Section 11-A of the ID Act to grant relief with minor penalty."

"8. In case of proved misappropriation, in our view, there is no question of considering past record. It is the discretion of the employer to consider the same in appropriate cases, but the Labour Court cannot substitute the penalty imposed by the employer in such cases"

(e). The Supreme Court in the case of Karnataka State

Road Transport Corporation Vs. B.S. Hullikatti, reported in (2001) 2 SCC, 574, has held that the conductors are acting in fiduciary capacity and if there is any misappropriation misplaced sympathy shown by the Labour Court cannot be allowed. Relevant paragraph No. 5 and 6 of the said decision read as under :

"5. On the facts as found by the Labour Court and the High Court, it is evident that there was short-changing of the fare by the respondent from as many as 35 passengers. We are informed that the respondent had been in service as a conductor for nearly 22 years. It is difficult to believe that he did not know what was the correct are which was to be charged. Furthermore, the appellant had during the disciplinary proceedings taken into account the fact that the respondent had been found guilty on as many as 36 times on different dates. Be that as it may, the principle of res ipsa loquitur, namely, the facts speak for themselves, is clearly applicable in the instant case. Charging 50 paise per ticket more from as many as 35 passengers could only be to get financial benefit, by the conductor. This act was either dishonest or was so grossly negligent that the respondent was not fit to be retained as a conductor because such action or inaction of his is bound to result in a financial loss to the appellant Corporation."

"6. It is misplaced sympathy by the Labour Courts in such cases when on checking it is found that Bus Conductors have have either not issued tickets to a large number of passengers, though they should have, or have issued tickets of a lower denomination knowing fully well the correct fare to be charged. It is the responsibility of the Bus Conductors to collect the correct fare from the passengers and deposit the same with the company. They act in a fiduciary capacity and it would be a case of gross misconduct if knowingly they do not collect any fare or the correct amount of fare."

(f) In similarly situated case, the Supreme Court in the case of KSRTC (NWKRTC) Vs. A.T. Mane, reported in JT 2004 (8) SC 103, has held that whenever there is misappropriation by the conductors, there is nothing wrong for the Corporation loosing confidence or faith in such

persons and awarding punishment of dismissal and relevant paragraphs No.4, 5 and 13 thereof reads as under :

"4. As stated above, aggrieved corporation preferred a writ petition before the High Court of Karnataka. The learned Single Judge who heard the writ petition agreed with the Labour Court that since the corporation failed to examine the passengers from whom the said excess amount was collected, the charge of non-issuance of tickets or issuance of tickets of lesser denomination could not be upheld. The learned Single Judge also agreed with the Labour Court that the punishment awarded was also excessive however, it thought fit to reduce the back wages awarded by the Labour Court."

"5. On appeal filed against the said judgment before the Division Bench of the High Court of Karnataka came to be dismissed by the Division Bench on two grounds firstly, it held that there was a delay of 16 days in preferring the appeal. However, the court observed that it would have certainly condoned the said delay had there been any merit in the appeal. Having said so the Division Bench held that they do not find any merit in the appeal and agreed with the single judge that the order of reinstatement with reduced back wages was a just order."

"13. Coming to the question of quantum of punishment, one should bear in mind the fact that it is not the amount of money misappropriated that becomes a primary factor for awarding punishment, on the contrary, it is the loss of confidence which is the primary factor to be taken into consideration. In our opinion, when a person is found guilty of misappropriating corporation's fund, there is nothing wrong in the corporation losing confidence or faith in such a person and awarding a punishment of dismissal."

(g) Similarly, so far as powers conferred u/s 11-A of the Industrial Disputes Act, 1974, the Supreme Court in the case of Bharat Heavy Electricals Ltd. Vs. M.Chandrasekhar Reddy and others, reported in (2005) 2 SCC 481, that the powers conferred upon the Labour Court u/s 11-A of the Industrial Disputes Act is not unfatal

discretion. Relevant paragraph 14 of the said decision reads as under:

"para 14 : With respect, we are unable to agree with these findings of the High Court. In our opinion, there is no such thing as unlimited jurisdiction vested with any judicial or quasi-judicial forum. An unfettered discretion is a sworn enemy of the constitutional guarantee against discrimination. An unlimited jurisdiction leads to unreasonableness. No authority, be it administrative or judicial has any power to exercise the discretion vested in it unless the same is based on justifiable grounds supported by acceptable materials and reasons therof."

(h). It is also held by the Supreme Court in the case of State of Haryana and another Vs. Rattan Singh, reported in AIR 1977 SC 1512 that the passengers are not required to be examined. The report of Checking Squad is enough and sufficient. In the present case, the Labour Court, Bharuch has not appreciated the aforesaid catena of the decisions of the Supreme Court coupled with the fact that there is no challenge by the respondent-workman as to legality and validity of the departmental inquiry held by the petitioner Corporation. Punishment awarded by the petitioner Corporation by no stretch of imagination can be labelled as unreasonably excessive and shockingly disproportionate. On the contrary the same was just, proper, adequate and in consonance with the misconduct of misappropriation committed by the respondent workman. Sympathy shown by the Labour Court, Bharuch is misplaced. In the present case, there are lot of misconducts of the respondent workman which are more than 2 dozens in number. Every time there is punishment of stoppage of annual increment and net effect of the punishments, as per the learned advocate will not make the respondent entitled to get any annual increment till he retires and therefore stoppage of three increments with future effect and reinstatement in replacement of punishment of dismissal is absolutely ineffective and the increments of the respondent have been stopped for his past misconduct. Even otherwise also the respondent workman is holding post of faith and confidence and is working in fiduciary position.

Misappropriation by the respondent workman ought to have been dealt with strictly and therefore punishment of dismissal from service awarded by the petitioner Corporation to the respondent workman is absolutely just, proper, adequate and in consonance with the misconduct of the respondent workman and it was not warranted for the Labour Court, Bharuch in exercise of its power conferred u/s 11-A of the Industrial Disputes Act, 1947 to interfere with the punishment of dismissal of the workman.

12. In view of the aforesaid reasons, the present petition is allowed and the award dated 10-1-2000 passed by the Labour Court, Bharuch in Reference (LCB) No.299 of 1996 is quashed and set aside. Rule is made absolute, with no order as to costs.

(D.N. Patel, J.)
_/\/Satwara/